

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

AZIZULLAH MAHAR,

Plaintiff,

CV-03-1783-ST

v.

OPINION AND ORDER

CITY OF PORTLAND,

Defendant.

STEWART, Magistrate Judge:

Defendant, the City of Portland (“City”), moves for summary judgment against the two remaining claims of plaintiff, Azizullah Mahar (“Mahar”), on the ground that he cannot state a *prima facie* case of discrimination based on the failure to hire him for Civil Service Exam No. 02-130. The sole basis of the City’s motion is that it had no vacant, open position available in which to hire any applicant. Mahar was the only eligible candidate on the January 22, 2003 list of eligible candidates generated from Exam No. 02-130.

This court has carefully reviewed the entire record and concludes that the City’s motion must be denied. Exam No. 02-130 included selective certification questions generated by the

Bureau of Environmental Services (“BES”) and represented that an answer to those questions was required for consideration “for the *current modeling vacancy in BES.*” Plaintiff’s Ex. T, p. 4 (emphasis added). Although any claim based on previous openings at BES is precluded, *see* Opinion and Order (docket #61), the record reveals that Mahar was repeatedly rejected for such openings. At all relevant times, BES had a demonstrated need to hire, but under highly suspicious circumstances the necessary paperwork was delayed, the eligibles list for Exam No. 02-130 was retired, and – despite an expressed need to complete two hires – BES hired only one individual from the newly generated list from Exam No. 03-081, which did not include Mahar. The evidence allows the conclusion that Mahar’s race was used as a negative factor in evaluating him for BES positions, that declaration of a formal opening was prevented by delaying necessary paperwork, and that BES officials disregarded customary hiring practices in order to avoid hiring from the list on which Mahar was the sole eligible candidate. In sum, cumulatively, the record reveals evidence from which a factfinder could reasonably conclude that BES officials unlawfully discriminated against Mahar based on his race or national origin.

ORDER

Based on the above, it is ORDERED that the City of Portland’s Motion for Summary Judgment (docket #71) is DENIED and oral argument, previously scheduled for October 20, 2005, at 9:30 a.m. is STRICKEN.

DATED this 18th day of October, 2005.

_____/s/ Janice M. Stewart
Janice M. Stewart
United States Magistrate Judge